UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Millenium Properties, LLC,
a Minnesota limited liability company,
Senior Cottages of America, LLC,
Senior Cottage Management, LLC, and
Murray Klane,an individual.

Bankruptcy Nos. 00-32002-GFK
00-32012-GFK
00-32011-GFK
00-32486-GFK

Adversary No. _________________

Timothy D. Moratzka,
Trustee in Bankruptcy Estate of
Millenium Properties, LLC et al.,

Plaintiff,

vs.

Guilford Capital Corporation,
an Alabama corporation, et al.

Defendants.

COMPLAINT

Plaintiff, Timothy D. Moratzka, Trustee in Bankruptcy of the Estates of Millenium Properties, LLC, a Minnesota limited liability company, and the owner of Frankfort Cottage Development, LLC, a Kentucky limited liability company, Senior Cottage of America, LLC, Senior Cottage Management, LLC, and Murray Klane, an individual, for his Complaint against the Defendants Guilford Capital Corporation, an Alabama corporation, Guilford Tax Credit Acquisition Fund, Ltd., an Alabama limited partnership, Guilford C.F., L.L.C., an Alabama limited liability company, Guilford Realty Corporation, an Alabama corporation, and Cottages of Frankfort, Ltd., a Kentucky limited partnership, states as follows:

NATURE OF THE ACTION

1. This is an action involving Defendants' breach of contract, breach of the covenant of good faith and fair dealing, breach of fiduciary duty and unjust enrichment arising out of Defendants' failure to pay sums due to Plaintiffs, and Defendants' wrongful termination of Plaintiffs' partnership interest in a low income housing project for senior citizens located in Frankfort, Kentucky (the "Frankfort Project").

PARTIES

2. Millennium Properties, LLC ("Millennium"), a Minnesota limited liability company formed on June 24, 1998, was a real estate development company engaged in the business of building Section 42 low income housing. Millennium had its principal place of business in Minnetonka, Minnesota.

3. On or about August 1, 1998, Senior Cottages of America, LLC ("SCA") and Senior Cottages Management, LLC, (collectively, "Senior Cottages"), Minnesota limited liability companies, assigned to Millennium certain interests in a number of low income housing projects, including, inter alia, the right to Senior Cottages' partnership interests in the Frankfort Project, including development fees and other income from such Project.

4. Murray R. Klane ("Klane") was the Chief Manager/Chief Executive Officer of Millennium.

5. Frankfort Cottages Development, LLC ("Frankfort Development"), is a Kentucky limited liability company with its principal place of business in Minnesota, which was formed as the general partner of Cottages of Frankfort, Ltd. in November 1996 to perform development services in connection with the Frankfort Project. Frankfort Development is owned by Millenum.

6. Millenium, Senior Cottages, and Klane filed petitions in Chapter 7 Bankruptcy on

July 18, 2000, and Timothy D. Moratzka is duly qualified and acting Trustee of the several bankruptcy estates.

7. Defendant Cottages of Frankfort, Ltd. ("Frankfort Partnership") is a limited partnership formed under the laws of the State of Kentucky. The Frankfort Partnership was formed by Senior Cottages to acquire land and develop, construct, own and operate a low income residential housing complex for senior citizens in Frankfort, Kentucky, i.e., the Frankfort Project. Frankfort Development was the general partner of the Frankfort Partnership prior to its purported removal by Defendants.

8. Upon information and belief, Defendant Guilford Capital Corporation ("Guilford Capital") is an Alabama corporation which has its principal place of business in Alabama. Defendant Guilford Capital Corporation is the sole limited partner of the Frankfort Partnership.

9. Upon information and belief, Defendant Guilford Tax Credit Acquisition Fund, Ltd. ("GTCAF") is an Alabama limited partnership, which has as its general partner Guilford Capital.

10. Upon information and belief, Defendant Guilford C.F., L.L.C. ("Guilford C.F.") is an Alabama limited liability company engaged in the business of lending money to and investing in moderate- and low-income housing projects.

11. Upon information and belief, Guilford Realty Corporation is an Alabama corporation.

JURISDICTION

12. This is an adversary proceeding brought pursuant to Bankruptcy Rule 7001, U.S.C. §§ 541, 542 and 723 and Local Rule 7000 et seq. The Court has jurisdiction pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding.

FACTUAL BACKGROUND

The Low Income Housing Tax Credit

13. This case revolves around a potentially lucrative asset: Low Income Housing Tax Credits ("LIHC"). As part of the Tax Reform Act of 1986, Congress created the LIHC to encourage the development of low income housing in the United States. The LIHC law permits owners of qualifying low income housing projects to claim a specified amount of tax credits for ten years as long as the housing projects are rented at reduced rates to individuals with low incomes.

14. Tax credits such as those established in the LIHC law are used by taxpayers to offset personal or corporate income tax liability. Generally, for each dollar in LIHC a taxpayer receives, the taxpayer owes one dollar less in federal personal or corporate income taxes.

15. LIHC are assigned to the various states for distribution to qualifying housing projects. On a yearly basis, each state - generally through its housing agency - accepts applications from land owners and project developers seeking credits. The state housing agencies allocate or reserve credits for specific housing projects based on the LIHC applications.

16. Under the LIHC law, state housing agencies may allocate LIHCs to projects that developers intend to build. Developers or property owners who file LIHC applications for projects they intend to build must complete the project by placing it in service within two years from the year the project receives a reservation of credits. If the property owner fails to place the housing project in service within two years, the tax credit reservation must be canceled and the project does not receive the credits.

17. Individuals, corporations and other institutions typically purchase LIHCs from the property owners and developers who are awarded the LIHCs. Those individuals, corporations

and other institutions may in turn "syndicate" or sell the tax credits to investors.

18. In 1996, SCA received tax credit allocations for a number of projects, among them, the Frankfort Project. Because the Frankfort Project was a 1996 tax credit project, it was to be completed by December 31, 1998, or the Project's tax credit reservation would be canceled. In this case, as is set forth below, Millennium and Klane estates were able to obtain a one-year extension from Kentucky Housing Corporation, the tax credit allocating agency, due to flooding which substantially delayed the Project construction.

Equity and Debt Financing of Low Income Housing Projects

19. As a matter of industry practice, the financing of low income housing developments is generally structured with the developer, either using its own capital or, as in this case, obtaining pre-equity financing, and making initial outlays in connection with the housing project. For instance, the developer incurs development expenses for marketing and environmental studies, topographical surveys, the purchase of the land, and other start-up costs. Thereafter, the developer obtains construction financing, which it uses in part to pay off any pre-equity loans. Then, after construction is completed, the developer obtains permanent financing secured by a mortgage. This permanent financing funds, among other things, repayment of the construction loan for the project.

20. When LIHCs are reserved in connection with a housing project, the entity that is providing the financing for the project (or another entity) may obtain an equity interest in the project by purchasing LIHCs from the developer for a percentage of the actual amount of the reserved tax credits.

Guilford Agrees to Provide SCA Equity and Debt Financing

The Special Agreement

21. SCA and Guilford Capital executed a Special Agreement, dated November 17, 1997 ("Special Agreement").

22. Under the Special Agreement, Guilford Capital pledged to lend SCA in excess of $240,000.00 for the development costs with respect to four low income housing projects, including the Frankfort, Kentucky low income housing project ("the Frankfort Project"). Such loan was to be secured by SCA and several of its principals, a pledge of the limited and general partnership interest and, where appropriate, a first mortgage. Guilford agreed to increase such loan amounts for any amounts due prior to the close of the construction loan.

23. Guilford further agreed that such loan would be repaid "at the earlier of (1) the closing of the construction loan for the partnership or (2) four months [sic][after] the date of the rejection (if any) by Guilford for the such [sic] Project."

November 1997 Letter of Intent and Term Sheet

24. On or about November 17, 1997, SCA and Guilford Capital executed a Letter of Intent with an accompanying Term Sheet (collectively, "November 1997 Term Sheet"). Under the terms of the November 1997 Term Sheet, Guilford Capital or a Guilford Capital-related entity would acquire a 99.99 percent sole limited partner interest in a partnership which was to own, develop and operate one 120-unit apartment complexes with respect to each of four projects, among them, the Frankfort Project. With respect to the Frankfort Project, the unnamed partnership was subsequently named Cottages of Frankfort, Ltd. (i.e., the "Frankfort Partnership").

25. Pursuant to the November 1997 Term Sheet, SCA, or an entity approved by

Guilford Capital, was to be the general partner, with a 0.01 percent interest in the Frankfort Partnership. For this purpose, SCA formed Frankfort Cottages Development, LLC ("Frankfort Development"). Frankfort Development became the general partner of the Frankfort Partnership, as reflected in the Letter of Intent and Term Sheet dated July 27, 1998 (collectively, the "July 1998 Term Sheet") and the First Amended and Restated Certificate and Agreement of Limited Partnership of Cottages of Frankfort, Ltd.

26. Pursuant to the November 1997 Term Sheet, Guilford or an affiliate also agreed to acquire an equity interest in the Frankfort Project by purchasing LIHCs, payable in installments concurrent with the construction loans on the projects. Guilford's affiliate, Guilford Mortgage Corporation, committed to provide construction and permanent financing for the projects, including the Frankfort Project, and to arrange or provide through an affiliate construction and permanent financing on the Project.

27. The November 1997 Term Sheet appointed Guilford Realty Corporation as the co-general partner of the Frankfort Partnership, which, pursuant to the terms of the November 1997 Term Sheet, has no control of the Partnership unless and until the general partner, Frankfort Development, withdrew or was removed from the Frankfort Partnership. The removal of Frankfort Development as general partner would therefore give Guilford and its related entities a 100% interest in, and control of, the Frankfort Project.

December 1997 Note

28. In or about August 1998, the Cottages of Frankfort, Ltd., on the one hand, and Guilford C.F., on the other hand, executed an Amended and Restated Master Future Advance Secured Promissory Note, dated December 10, 1997 ("December 1997 Note"), prepared by Guilford, C.F., which reflected a loan made on or about December 10, 1997. The December

1997 Note expressly was given by Guilford C.F. to Cottages of Frankfort, Ltd. pursuant to the Special Agreement. Under the December 1997 Note, Guilford C.F. agreed to lend Cottages of Frankfort, Ltd., $267,000 to meet certain costs connected with the Frankfort Project.

29. Frankfort Development expended these funds solely and exclusively for development purposes, including, but not limited to, requisite market studies, environmental studies, topography surveys, land, accounting, architecture and engineering fees, lumber, and other costs associated with the Frankfort Project.

January 1998 Note

30. In or about August 1998, Cottages of Frankfort, Ltd., on the one hand, and Guilford C.F., on the other hand, executed an Amended and Restated Master Future Advance Secured Promissory Note, dated January 7, 1998 ("January 1998 Note"), prepared by Guilford, C.F., reflecting a loan made on or about January 7, 1998. The January 1998 Note expressly was given by Guilford C.F. to Cottages of Frankfort, Ltd. pursuant to the Special Agreement. Under the January 1998 Note, Guilford C.F. agreed to lend Cottages of Frankfort, Ltd., $127,000 to meet certain costs connected with the Frankfort Project.

31. Frankfort Development expended these funds solely and exclusively on development costs associated with the Frankfort Project.

March 1998 Amended Development Agreement

32. On or about March 11, 1998, the Frankfort Partnership and SCA entered into an Amended Development Agreement.

33. The Amended Development Agreement provides, inter alia, for the payment by the Frankfort Partnership to SCA of certain fees, in excess of $900,000, in consideration for past and future development services with respect to the Project.

34. The Amended Development Agreement also entitles SCA, as the developer, to reimbursement from the Frankfort Partnership for "any costs, fees or expenses incurred in connection with the organization of the Partnership or the construction and development of the [Frankfort] Project, including, without limitation of the generality of the foregoing, payments of any cash escrows or letters of credit, attorneys fees, accountants fees, travel expenses or other consulting fees incurred in connection with the [Frankfort] Project."

Klane Replaces The Former Principal of SCA, Saves The Frankfort Project From Foreclosure, And Secures an Extension of The LIHCs

35. In April 1998, Murray Klane replaced one of SCA's former officers, and became Chief Manager/CEO of SCA.

36. At that time, the Frankfort Project was behind schedule due to, *inter alia*, 1997 flooding in the area and a resultant labor shortage, and the Project's land was in foreclosure. In fact, the land was within days of being sold at a sheriff's foreclosure sale. Klane, on behalf of the Frankfort Partnership, negotiated with the landowner to save the land from foreclosure. The landowner agreed to forego foreclosure in exchange for a payment of $100,000, which Klane paid to the landowner on behalf of the Frankfort Partnership.

37. Klane, on behalf of the Frankfort Partnership, also paid approximately $31,000 to Bennie R. Maffet to cover engineering costs associated with the Frankfort Project.

38. Furthermore, Klane extended nearly $4,000 to Charles Jones, Esq., the attorney for the Frankfort Partnership and Receiver for the Frankfort Project, for legal fees and expenses relating to the closing of the land purchase.

39. Klane's advances to the Frankfort Partnership, totaling $134,972.00, are memorialized in a Promissory Note from the Frankfort Partnership to Murray Klane, dated May 8, 1998. Klane's monetary advances and his related efforts saved the Frankfort Partnership

from failure.

40. Klane also took additional steps in April 1998 to enhance the value of the Frankfort Project on behalf of the Frankfort Partnership. Namely, with the consent and approval of Defendants, Klane met with the Kentucky Housing Corp., the LIHC allocating agency for the Frankfort Project, and convinced them that it was economically advantageous to downsize the number of housing units involved in the Frankfort Project from 120 to 96, and to decrease the size of the units.

41. Several months later, in or about July 1998, with the December 31, 1998 Frankfort Project completion deadline approaching, Klane, on behalf of the Frankfort Partnership, and with the consent and approval of Defendants, lobbied the Kentucky Housing Corp. and secured an extension of the LIHCs on the Frankfort Project until December 31, 1999.

July 1998 Letter of Intent and Term Sheet

42. On or about July 27, 1998, Frankfort Development, on the one hand, and Guilford Capital, on the other hand, executed a letter of intent and Term Sheet (collectively, "July 1998 Term Sheet"), prepared by Guilford Capital. Under the July 1998 Term Sheet, Guilford Capital and/or any "one or more funds formed and managed by Guilford" Capital agreed to acquire an equity interest in the Project by purchasing tax credits with respect to the Frankfort Project, payable in installments concurrent with the construction loans on the Project. Guilford's affiliate, Guilford Mortgage Corporation, committed to provide, or arrange for the provision of construction and permanent financing for the projects, including the Frankfort Project.

Millennium Purchases Senior Cottage's Development Interests in the Frankfort Project and Further Advances The Project

43. Effective August 1, 1998, Millennium assumed all of Senior Cottage's interests in

the Frankfort Project.

44. Around that time, Tranum Fitzpatrick, one of the principals of Defendants, invited Klane to meet with him in Lanett, Alabama. Klane did so. The parties agreed to move forward expeditiously on the Frankfort Project. Defendants' principal, Tranum Fitzpatrick, acknowledged Klane's successful efforts to avoid foreclosure on the Frankfort Project land, and the extension of the tax credits on that Project, all to the Frankfort Partnership's benefit.

Amended Limited Partnership Agreement

45. On or about August 1, 1998, Frankfort Development, as general partner, and GTCAF, as the limited partner, entered into a First Amended and Restated Certificate and Agreement of Limited Partnership of Cottages of Frankfurt, Ltd. ("Amended Limited Partnership Agreement"). As set forth in that Amended Limited Partnership Agreement, Frankfort Development and GTCAF desired to admit GTCAF into the Frankfort Partnership, to withdraw SCA as limited partner, and to amend and restate the partnership agreement.

46. The Amended and Restated Partnership Agreement set forth the respective rights and obligations of the parties with respect to the Frankfort Partnership and gave rise to a fiduciary relationship between the parties.

47. At paragraph XV, the Amended and Restated Partnership Agreement provides as follows:

> The General Partner may be removed as a Partner and expelled from the Partnership by written notice of the Limited Partner upon (1) any default under the Promissory Note of the Partnership to Empire-Rouse, Inc., or the Promissory Note of the Partnership to Guilford Capital Corporation, or under the mortgage securing either of such Notes; (2) committing any act of fraud, negligence, misconduct, breach of fiduciary duty or misrepresentation against the Partnership or any Partner, or using or appropriating for personal use or benefit, funds or properties of the Partnership when not authorized to do so.

Frankfort Development Engages An Architect And Is Poised for Construction

48. On or about October 1, 1998, Frankfort Development engaged an architectural firm, Ready Architectural Associates, Inc., and after committing substantial time and effort on the Frankfort Project in October and November 1998, was ready to begin construction of the Project on or about February 1999.

Guilford Capital Purports to Cancel the Special Agreement & Amended Development Aqreement and Sever Frankfort Development As General Partner

49. In December 1998, without just cause or justification or prior notice, and to exploit the time, money and effort expended by Plaintiffs to save the Frankfort Project from ruin and advance the progress on the Project, Defendants purported to terminate all of Plaintiffs' interests in the Frankfort Project.

50. On or about December 7, 1998, Guilford Capital Corporation purported to give SCA notice that it was terminating the Special Agreement dated November 17, 1997.

51. On or about December 7, 1998, the Frankfort Partnership, Ltd. purported to give SCA notice that it was terminating the parties' Amended Development Agreement, asserting that SCA had breached its duties and obligations under that agreement by, among other things, failing to timely perform its obligations to ensure timely completion of the Project.

52. On or about December 7, 1998, GTCAF, by and through Guilford Capital, purported to remove Frankfort Development as general partner of the Frankfurt Partnership, based on Frankford Development's alleged defaults on the December 1997 Note and the January 1998 Note.

53. The purported cancellation of the Amended Development Agreement and Special Agreement were ineffective, and did not serve to cancel such agreements.

54. Defendants never paid SCA nor Millennium any portion of the fees set forth in the

Amended Development Agreement.

55. The Frankfort Partnership defaulted on its March 1998 Promissory Note to Murray Klane by failing to make any payment under such Note, and failed to or to otherwise repay Klane for the $134,972.00 advanced by Klane on behalf of the Frankfort Partnership.

56. The purported removal of Frankfort Development as general partner of the Frankfort Partnership was ineffective because there was no default on the December 1997 Note or January 1998 Note.

57. The purported removal of Frankfort Development as general partner of the Frankfort Partnership also was ineffective because, even if there were a default on the December 1997 Note or January 1998 Note, any such default would not trigger the removal clause. It is only the defaults on Promissory Notes to Empire-Rouse, Inc. or Guilford Capital Corporation that can trigger such removal, and the December 1997 and January 1998 Notes are payable to Guilford C.F.

COUNT I

(BREACH OF CONTRACT)

58. The allegations set forth in paragraphs 1 through 57 are incorporated herein by this reference as if fully set forth.

59. Defendants breached the parties' agreements by, inter alia:

a. Failing to pay to SCA or Frankfort Development the development fees as set forth in the Amended Development Agreement, or any portion thereof;

b. Failing to pay Klane $134,972.00 pursuant to the March 1998 Promissory Note;

c. Failing to otherwise repay the monies advanced by Klane on behalf of the Frankfort Partnership, pursuant to the Amended Development Agreement;

d. Wrongfully purporting to cancel the Special Agreement and the Amended Development Agreement and depriving Plaintiffs of the benefits thereof;

e. Wrongfully purporting to sever Plaintiff's partnership interest in the

Frankfort Project and depriving Plaintiff of the benefits of such interest;

f. Failing to provide additional pre-construction financing for the Frankfort Project as set forth in the Special Agreement.

60. Plaintiff performed their obligations under the contracts, except those which have been excused by Defendants' breach.

61. Plaintiff suffered damages as a result of Defendants' breach of such contracts, in an amount to be determined at trial.

COUNT II

(UNJUST ENRICHMENT)

62. The allegations set forth in paragraphs 1 through 61 are incorporated herein by this reference as if fully set forth.

63. Defendants have been unjustly enriched at the expense of Plaintiff to the extent that Defendants failed to repay the $134,972.00 plus interest advanced on behalf of Frankfort Partnership, to the extent of unpaid development fees, and to the extent of any and all other income to which Plaintiff is entitled under the agreements set forth above.

64. Plaintiff has suffered damages as a result of Defendants' unjust enrichment, in an amount to be determined at trial.

COUNT III

(BREACH OF IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING)

65. The allegations set forth in paragraphs 1 through 64 are incorporated herein by this reference as if fully set forth.

66. Each of the agreements entered into between Plaintiff and Defendants contains an implied covenant that neither party will do anything to deprive the other of the benefits of the contract, also known as the covenant of good faith and fair dealing. This covenant of good faith and fair dealing precludes Defendants from unjustifiably hindering Plaintiff's performance of

those agreements.

67. Defendants breached the covenant of good faith and fair dealing by failing to repay the $134,972.00 advanced on behalf of the Frankfort Partnership; by failing to pay Plaintiff certain developers fees, by failing to provide pre-construction financing as set forth in the Special Agreement, and by purporting to terminate Plaintiff's partnership and other interests in the Frankfort Project without justification or notice.

68. As a result thereof, Plaintiff has suffered damages in an amount to be determined at trial.

COUNT IV

(BREACH OF FIDUCIARY DUTY)

69. The allegations set forth in paragraphs 1 through 66 are incorporated herein by this reference as if fully set forth.

70. By virtue of the respective right and duties set forth in the parties' agreements, *inter alia*, the First Amended Partnership Agreement, Defendants had a fiduciary relationship with the Plaintiff. Defendants breached their fiduciary duties to Plaintiff by, among other things, wrongfully purporting to cancel the Special Agreement and Amended Development Agreement; failing to provide pre-construction financing as set forth in the Special Agreement; purporting to remove Frankfort Development as general partner in the Frankfort Partnership; and failing to make payments due Defendants under the parties' various agreements.

71. As a consequence, Plaintiff has suffered damages in an amount to be determined at trial.

COUNT V

(INJUNCTIVE RELIEF)

72. The allegations set forth in paragraphs 1 through 71 are incorporated herein by this reference as if fully set forth.

73. Legal remedies are inadequate to remedy the harm incurred by Plaintiff.

74. Plaintiff requests that the Court order that Frankfort Development be reinstated as general partner in the Frankfort Partnership, and that Defendants fully comply with the terms of the Special Agreement, the Amended Development Agreement, and the Amended Partnership Agreement.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment as follows:

1. For damages against Defendants in an amount in excess of $500,000;

2. For an injunction, as set forth in paragraphs 72 through 74 above;

3. For costs, disbursements, pre-judgment and post-judgment interest, and reasonable attorneys' fees; and

4. For such other and further relief as the Court deems justified.

Dated: July 20, 2004

MACKALL, CROUNSE & MOORE, PLC

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